



November 6, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, MB Docket Nos. 14-50, 09-182, 07-294, 04-256,
17-289, GN Docket No. 16-142

Dear Ms. Dortch:

On November 2, 2017, Rick Kaplan, Alison Neplokh, Emmy Parsons and the undersigned, all of the National Association of Broadcasters (NAB), met with Matthew Berry and Alison Nemeth of Chairman Pai's office. During these meetings, NAB reiterated the points set forth in our letter of November 2, 2017 discussing the draft Order on Reconsideration and Notice of Proposed Rulemaking updating the Commission's broadcast ownership and attribution rules, as well as the draft Report and Order and Further Notice of Proposed Rulemaking authorizing broadcasters to use the Next Generation TV standard. Also on November 2, 2017, Alison Neplokh and the undersigned spoke by telephone with Brendan Murray of the Media Bureau regarding the draft Next Gen order.

During our discussion of the Next Gen order with the chairman's office, we also discussed the ludicrous advocacy of the pay-tv lobby and its apologists in this proceeding concerning broadcaster over-the-air coverage areas during the Next Gen transition. The assertion that pay-tv providers, which include some of the least popular companies in America due to their unique commitment to providing dismal customer service, care deeply about the welfare of over-the-air viewers is laughable.

The truth is that these companies have built profitable business models with a heavy emphasis on exorbitant and unwarranted consumer fees and charges. As usual, their only concern is lowering their costs of doing business. They seek to pad their profit margins not only by dragging retransmission consent issues kicking and screaming into any proceeding that even tangentially affects television service, but now apparently by claiming to care whether viewers receive over-the-air signals. That's almost as funny as the time the

American Cable Association tried to claim that, when it said that some of its members didn't want to carry "urban-interest" programming, it didn't *really* mean video redlining.¹

Back down here on planet Earth, NAB recommends that the Commission adopt a standard for expedited processing of applications that mirrors the coverage area standard the Commission used during the DTV transition. During the DTV transition, the Commission required stations to ensure that their predicted DTV service contour covered their community of license.² The Commission's reasoning in this regard – providing broadcasters "a measure of flexibility as they build their DTV facilities to collocate their antennas at common sites, thus minimizing potential local difficulties locating towers and eliminating the cost of building new towers," applies with equal force to the Next Gen deployment.³ NAB's analysis suggests that, under the draft order's standard, 22 percent of television stations would have no available simulcasting partners that could qualify for expedited processing, and an additional 12 percent of stations would have only a single potential partner.

The Commission should also clarify its encryption discussion. The draft order cites a 1987 Commission order setting out three indicia of a service provider's intent that a service not be received by the public. The draft order paraphrases these factors and states that the Commission has no reason to believe that a free signal would be encrypted. One of these indicia was the encryption of programming so that it could not be enjoyed without special equipment supplied and programmed by the service provider to decode the signal.⁴ In fact, Next Gen signals may be encrypted to protect the value of content transmitted using those signals – but viewers will not require special equipment supplied and programmed by the broadcaster to decode Next Gen signals. The Commission should clarify this description in the draft order, stating that while free Next Gen signals may be encrypted, they do not require special equipment programmed by a service provider.

NAB welcomes the approval of a voluntary, market-driven deployment of Next Gen TV. Commission approval of this standard will be pro-consumer and pro-innovation, setting the stage for broadcasters to offer superior service to their viewers and maintain competitiveness in a dynamic video programming marketplace.

¹ Letter from Michael Nilsson to Marlene H. Dortch, MB Docket No. 16-41 (Aug. 26, 2016).

² Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 5946, ¶ 20 (2001).

³ *Id.* at ¶ 21.

⁴ *Subscription Video Services*, Report and Order, 2 FCC Rcd 1001, ¶ 41 (1987).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick McFadden", with a long horizontal flourish extending to the right.

Patrick McFadden
Associate General Counsel,
National Association of Broadcasters

cc: Matthew Berry
Alison Nemeth
Brendan Murray